

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MODERN HANDLING EQUIPMENT  
OF N.J., INC.

Plaintiff,

v.

GOULD INTERNATIONAL, INC.,  
d/b/a GIANT BATTERY CO.

Defendant

Civil Action No. 02-CV-3204

**MOTION OF PLAINTIFF, MODERN HANDLING EQUIPMENT OF N.J., INC.,  
FOR EXTENSION OF TIME  
FOR MAKING SERVICE OF SUMMONS AND AMENDED COMPLAINT  
AND FOR SPECIAL ORDER OF COURT DIRECTING THE METHOD OF SERVICE**

1. This is a Motion by Plaintiff, Modern Handling Equipment of N.J., Inc., (“Modern”) for an extension of time within which to make service of the Summons and Amended Complaint upon the Defendant, Gould International, Inc., d/b/a Giant Battery Co., (“Giant”) and for a special Order directing the method of service, all as a result of the efforts of Giant’s sole officer to avoid service of the Summons and Amended Complaint.

2. As appears from the records of the Pennsylvania Department of State, a copy of which is attached hereto as Exhibit “A”, Gould International, Inc. is a Pennsylvania corporation with a registered address at 9 Brinker Drive, Chalfont, PA 18914. As also appears from those records, R. Stephen Smith is the Chief Executive Officer, Secretary and Treasurer of Gould International, Inc.

3. As further appears from the records of the Pennsylvania Department of State, a copy of which is attached hereto as Exhibit "B", Giant Battery Company is a fictitious name under which Gould International, Inc. conducts business.

4. As appears from the records of the Recorder of Deeds of Bucks County, Pennsylvania, a copy of which is attached hereto as Exhibit "C", 9 Brinker Drive is a single-family residence which, on September 5, 2001, Mr. Smith and his wife Marion sold to Kelly R. and Dena M. Summers.


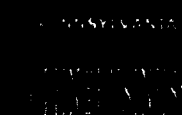
5. As more fully appears from the Affidavit of Lee A. Rosengard, attached hereto as Exhibit "D", Mr. and Mrs. Smith no longer reside at the Brinker Drive address, and Giant can no longer be served there.

6. At all times material to this action, Giant was doing business with Modern from Giant's place of business at 62-64 Vincent Circle, Ivyland, PA 18974.

7. As further appears from the affidavit of Mr. Rosengard, Giant no longer conducts business at the Vincent Circle address, and Giant can no longer be served there.

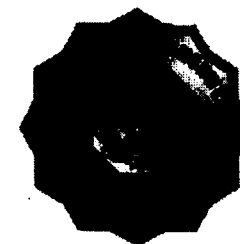
8. As a result of the fact that service upon Giant could not be made at its registered corporate address of 9 Brinker Drive, Chalfont, PA, or its place of business at 62-64 Vincent Circle, Ivyland, PA, Modern undertook to make service upon Giant pursuant to Federal Rule of Civil Procedure 4(h)(1), by delivering a copy of the Summons and Amended Complaint to the sole officer of Giant, i.e., R. Stephen Smith.

9. On or about September 11, 2002, Modern retained the services of a retired Delaware State Trooper, Mr. Donald F. McHugh of Aaron Investigations in Felton, Delaware, to make service of the Summons and Amended Complaint upon Mr. Smith.

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(Use Last Name, First Name for business names which consist of a person's first and last name (i.e., Smith, John Inc.))


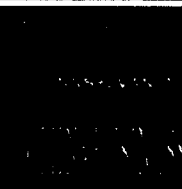
### Basic Entity Information ?

#### INCORPORATED BUSINESS

ENTITY NO:	2733322	TYPE:	INCORPORATED BUSINESS		CONSENT:	N
FILED DATE:		1-13-1997				
CURRENT NAME:		GOULD INTERNATIONAL, INC.				
ORIGINAL NAME:		GOULD INTERNATIONAL, INC.				
ADDRESS:		9 BRINKER DR				
CITY:	CHALFONT	STATE:	PA	ZIP:	18914	
COUNTY:	Bucks	CNTRY /JURIS:			PA	
PURP/DESC/CMNT:		BROAD				
LTD AUTH:	N	LTD/INC TERM			PERPETUAL	
ADNL PRTR		N				

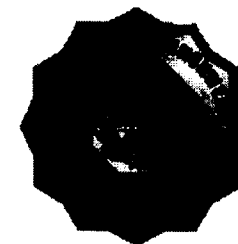
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Pennsylvania Department of State  
206 North Office Building, Harrisburg, PA 17120  
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### Basic Entity Information ? INCORPORATED BUSINESS

ENTITY NO:	2733322	TYPE:	INCORPORATED BUSINESS		CONSENT:	N
FILED DATE:		1-13-1997				
CURRENT NAME:		GOULD INTERNATIONAL, INC.				
ORIGINAL NAME:		GOULD INTERNATIONAL, INC.				
ADDRESS:		9 BRINKER DR				
CITY:	CHALFONT	STATE:	PA	ZIP:	18914	
COUNTY:	Bucks	CNTRY /JURIS:			PA	
PURP/DESC/CMNT:		BROAD				
LTD AUTH:	N	LTD/INC TERM			PERPETUAL	
ADNL PRTR		N				

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**EXHIBIT B**

Department

Professional  
Licensure

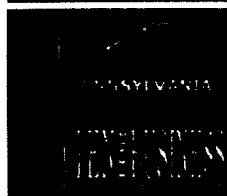
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State Athletic  
Commission

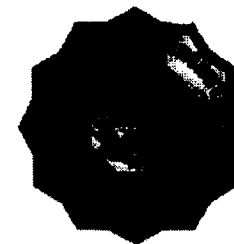
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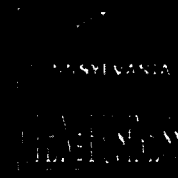
### Basic Entity Information ?

#### FICTITIOUS NAME

ENTITY NO:	2724868	TYPE:	FICTITIOUS NAME		CONSENT:	N
FILED DATE:	11-20-1996					
CURRENT NAME:	GIANT BATTERY COMPANY					
ORIGINAL NAME:	GIANT BATTERY COMPANY					
ADDRESS:	9 BRINKER DR					
CITY:	CHALFONT	STATE:	PA	ZIP:	18914	
COUNTY:	Bucks	CNTRY /JURIS:			PA	
PURP/DESC/CMNT:	MANUFACTURERS REPRESENTATIVE/SALES/SERVICE OF BATTERIES					
LTD AUTH:	N					

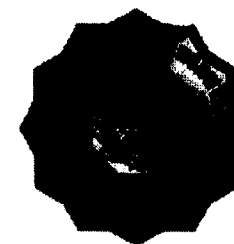
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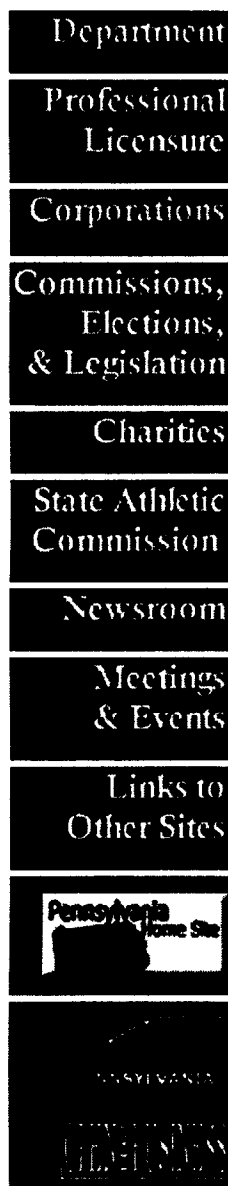
### Instrument History

ENTITY NO:		2724868			
CURRENT NAME:		GIANT BATTERY COMPANY			
TYPE:	ROLL:	START:	END:	COMMENTS:	DATE:
FICTITIOUS NAME	9676	943	943		11-20-1996
FICTITIOUS NAME AMENDMENT	9778	1581	1582	OWN	10-27-1997

[Basic Entity Information](#) | [Fictitious Name Owners](#) |

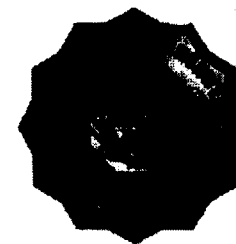
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Fictitious Name Owners

ENTITY NO:	2724868	
NAME:	GIANT BATTERY COMPANY	
OWNER NAME:	FILED DATE:	TIME:
GOULD INTERNATIONAL INC	10-27-1997	15:32:55:94

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**EXHIBIT C**

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Search Result

Rank 3 of 3

Database  
RPT-ALL-FIN

Filings Collected Through: 04-18-2002  
 County Last Updated: 09-09-2002  
 Current Date: 09/10/2002  
 Source: COUNTY RECORDER OF DEEDS  
 , BUCKS, **PENNSYLVANIA**

## OWNER INFORMATION

Owner(s): SUMMERS KELLY R & DENA M  
 Owner Relationship: HUSBAND/WIFE  
 Ownership Rights: TENANTS BY ENTIRETY  
 Property Address: 9 N BRINKER DR  
 DOYLESTOWN PA 18901-7046  
 Mailing Address: 9 BRINKER DR  
 DOYLESTOWN PA 18901-7046

## PROPERTY INFORMATION

County: **BUCKS**  
 Assessor's Parcel Number: 09 066 071  
 Property Type: SINGLE FAMILY RESIDENCE - TOWNHOUSE  
 Land Use: SINGLE FAMILY RESIDENCE  
 Building Square Feet: 3018

## TRANSACTION INFORMATION

Transaction Date: 09/05/2001  
 Seller Name: SMITH ROBERT S & MARION  
 Sale Price: \$399,000  
 Deed Type: GRANT DEED  
 Purchase Payment: MORTGAGE  
 Mortgage Amount: \$319,200  
 Mortgage Type: CONVENTIONAL  
 Mortgage Term: 30 YEARS  
 Lender Name: TRIDENT MTG  
 Lender Address: CHERRY HILL, NJ 08034  
 2nd Mortgage Amount: \$39,900  
 2nd Mortgage Type: CONVENTIONAL  
 2nd Mortgage Deed Type: MORTGAGE FORECLOSURE DEED  
 Recording Date: 09/18/2001  
 Document Number: 89283  
 Recording Book/Page: BOOK 2426, PAGE 1234  
 Title Company: TRIDENT LAND TRANSFER CO

END OF DOCUMENT

**EXHIBIT D**

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County of Philadelphia :  
: ss.  
Commonwealth of Pennsylvania :

**AFFIDAVIT OF LEE A. ROSENGARD**

Lee A. Rosengard, being first duly sworn according to law, deposes and says:

1. I am counsel for Plaintiff in an action captioned Modern Handling Equipment of N.J., Inc. v. Gould International, Inc., d/b/a Giant Battery Co., Civil Action No. 02-CV-3204 in the United States District Court for the Eastern District of Pennsylvania.
2. At the commencement of the above matter, in house counsel for Modern Group advised me that Giant Battery Co. had ceased doing business at its address at 62-64 Vincent Circle, Ivyland, PA 18974 and that it could not be served there.
3. On September 4, 2002, I contacted Jim Gemmell of J & J Detective Agency, 4366 Coldsprings Creamery Road, Doylsetown, PA 18901, to serve the Summons and Amended Complaint in the above matter upon R. Stephen Smith at 9 Brinker Drive, Chalfont, PA 18914. Upon his receipt of the service copies, Mr. Gemmill advised that he had made previous attempts to serve Mr. Smith at that address and that the Smiths had not lived there for some time.
4. On September 23, 2002, I spoke with "Karen" of the Abington, Pennsylvania, Police Department, (215) 885-4450, in connection with a criminal proceeding for access device fraud in which R. Stephen Smith is the defendant.
5. Karen advised me that Mr. Smith's current address was 108 Lucky Estates, Harrington, Delaware.

6. Karen further advised me that Mr. Smith had been released on \$25,000 surety posted by his father, Robert L. Smith, whose address is 3540 Concord Road, Doylestown, Pennsylvania 18901.

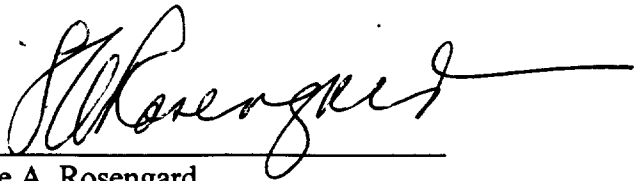
7. Karen additionally advised me that the representative of the Abington Police Department who was responsible for this matter was Detective Geliebter, (215) 885-4450 Ext. 1112, and that Mr. Smith was due to appear before Judge Price in Magistrate Court at 875 N. Easton Road, Glenside, PA 19038 on September 25, 2002 at 10:15 A.M.

8. In subsequent discussions with Judge Price's Courtroom Deputy, I was advised that Mr. Smith's appearance was rescheduled to October 23, 2002, and then to November 18, 2002, and subsequently to January 27, 2003. I was also advised that Mr. Smith's attorney in the criminal matter before Judge Price was Richard R. Fink, Esquire.

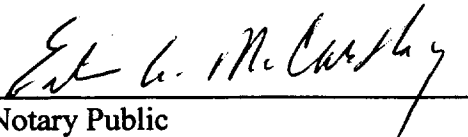
9. On September 26, 2002, I received a telephone call from Jean Francois Goulet, Esquire, 383 Cartier Boulevard West, Laval, Quebec H7N 2K5 Canada. Mr. Goulet advised me that he did not represent Mr. Smith. On the contrary, Mr. Goulet stated that he represented an individual named Alberto Peluso, who was negotiating for the purchase of Giant Battery Co. from Mr. Smith.

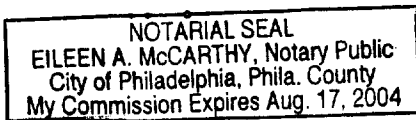
10. Mr. Goulet stated that contrary to Mr. Smith's telephone instructions to Donald F. McHugh, the private investigator who was attempting to serve the Summons and

Amended Complaint upon Mr. Smith, Mr. Goulet was not authorized to accept service, as Mr. Smith was not his client.

  
\_\_\_\_\_  
Lee A. Rosengard

Sworn to and subscribed before me  
this 18<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT E**

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County of Kent

:  
: ss.  
:

State of Delaware

**AFFIDAVIT OF DONALD F. McHUGH**

Donald F. McHugh, being first duly sworn according to law, deposes and says:

1. I am a retired Delaware State Trooper and the proprietor of Aaron Investigations, Inc., P.O. Box 365 Felton, Delaware 19943.
2. On Friday, September 13, 2002, I received a service copy of the Summons and Amended Complaint in the action captioned Modern Handling Equipment of N.J., Inc. v. Gould International, Inc., d/b/a Giant Battery Co., Civil Action No. 02-CV-3204 in the United States District Court for the Eastern District of Pennsylvania, from Lee A. Rosengard, Esquire, counsel for Plaintiff, Modern Handling Equipment of N.J., Inc. Mr. Rosengard's letter of instruction advised that I was to make personal service of the Summons and Amended Complaint on Mr. R. Stephen Smith, CEO, Secretary and Treasurer of Defendant, Gould International, Inc., d/b/a Giant Battery Co., who was believed to be residing in the area of Harrington, Delaware.
3. On September 16, 2002, I obtained information from local sources with regard to the residence address of Mr. Smith, which I determined to be 108 Lucky Estates, Harrington, Delaware.
4. On September 17, 2002, I learned that Mr. Smith had a court appearance in Dover, Delaware (JP#7) on Monday, September 23, 2002 at 9:00 A.M., concerning a Pennsylvania criminal matter.
5. On the morning of September 23, 2002, I went to JP#7 and was told by court personnel that Mr. Smith had responded to the Pennsylvania charges and appeared in

Doc. #641343v.1



Pennsylvania on September 18, 2002, and was therefore no longer required to appear in court in Delaware.

6. Later on the afternoon of September 23, 2002, I was advised that Mr. Smith had, in fact, appeared in JP#7, and I promptly went to his home address at 108 Lucky Estates, Harrington, Delaware, to serve the Summons and Amended Complaint on Mr. Smith.

7. At that time, Mr. Smith's wife answered the door and came outside to speak with me. She then spoke with Mr. Smith on a cell phone, during which time she described the Summons and Amended Complaint to Mr. Smith. She gave <sup>me DFM</sup> ~~my~~ Mr. Smith's cell phone number.

8. Approximately twenty minutes later I called Mr. Smith on his cell phone and advised him that I had a Summons and Amended Complaint to serve on him in the matter of Modern Handling Equipment of N.J., Inc. v. Gould International, Inc., d/b/a Giant Battery Co. He advised me that the papers should be served on an attorney who he identified as Mr. Goulet. He gave me Mr. Goulet's phone number, (450) 662-8822 Ext. 17.

9. On October 7, 2002, I visited a farm belonging to the Smith family in Kent County, Delaware, and observed Mr. Smith's business equipment and vehicles at that location. I spoke with relatives of Mr. Smith who confirmed that he was living at the Lucky Estates address. I returned to the Lucky Estates address and, finding no answer at the door, left my business card.

10. I made several additional attempts to serve Mr. Smith at his home at 108 Lucky Estates, Harrington, Delaware, each time leaving a business card. I did this on October 8, October 14, October 20, October 22, and October 27, 2002.

11. On November 1, 2002, Mr. and Mrs. Smith were reported as having been seen driving through Harrington, Delaware, a short distance from their home. I went to the

Smith home and attempted to serve Summons and Amended Complaint. Mrs. Smith met me at the door, stated that Mr. Smith was not at home and reported that she had not seen him recently, contrary to reliable advice that I had obtained just a short time earlier.

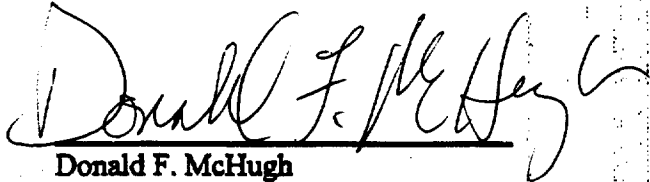
12. On November 29, 2002, I observed a Ryder rental truck and car trailer in the driveway of the Smith home, with one of Mr. Smith's cars (Delaware license plate OLDS - 442) on the trailer. I was able to identify the car as belonging to Mr. Smith because one of Mr. Smith's relatives had described the car as belonging to Mr. Smith at the time of my visit to the family farm described above. I attempted to make service but no one came to the door.

13. On December 2, 2002, I attempted to serve the Summons and Amended Complaint on Mr. Smith and was met at the door of the Smith home by an older gentleman who refused to identify himself. He stated that he was there to help the family move out of the residence and that Mr. Smith was not at home. A gray Mercedes-Benz with a Pennsylvania license plate (ETN - 6739) was parked on the lawn, leading me to believe that the gentleman was Mr. Smith's father, who I understood to be his surety in the Pennsylvania criminal matter.

14. The Smiths thereafter moved from their home in Lucky Estates. I confirmed this by speaking to the new owner of the home, a Mrs. Probsts.

15. On December 17, 2002, I confirmed with the Postmaster of the United States Post Office in Harrington, Delaware, that Mr. Smith had left no forwarding address.

16. On December 17, 2002, I spoke with a Mr. Dean, a relative of Mr. Smith. Mr. Dean advised me that Mr. Smith maintains a post office box where he receives mail, at P.O. Box 157, Harrington, Delaware 19952.

  
Donald F. McHugh

Sworn to and subscribed before me  
this 19<sup>th</sup> day of December, 2002.

  
Notary Public

**EXHIBIT F**

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Stradley Ronon Stevens & Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098  
Telephone (215) 564-8000  
Fax (215) 564-8120  
www.stradley.com

Lee A. Rosengard  
LRosengard@stradley.com  
215-564-8032

September 26, 2002

**BY FAX AND REGULAR MAIL**

Richard R. Fink, Esquire  
Fink, Fink & Associates  
The Lofts at Oxford Valley  
Suite 300  
174 Middletown Blvd.  
Langhorne, PA 19047

**Re: Modern Handling Equipment of N.J., Inc. v. Gould International, Inc.  
d/b/a Giant Battery Co., USDC E.D. Pa. Civil Action No. 02-CV-3204**

Dear Richard:

Thank you for speaking with me by phone this afternoon. As I mentioned, I represent Modern Handling Equipment of New Jersey, Inc. in an action against Gould International, Inc., d/b/a Giant Battery Co.

We have been unable to make service of the Amended Complaint upon the defendant corporation in this case because it is no longer doing business at its record address or at the address of its former retail establishment in Ivyland, Pennsylvania. However, the records of the Secretary of State of Pennsylvania reveal that R. Stephen Smith is the CEO, Secretary and Treasurer of the defendant. As a result, under the Pennsylvania Rules of Civil Procedure, which are applicable under Federal Rule of Civil Procedure 4(h)(1), service of the Summons and Amended Complaint upon Mr. Smith constitutes service upon Gould International, Inc., d/b/a Giant Battery Co.

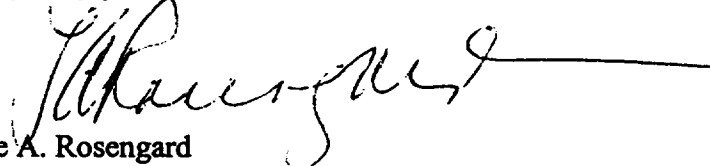
We have been unable to locate Mr. Smith's residence, and have therefore been unable to serve him. However, I understand that you represent him in an unrelated criminal matter, and the reason for my earlier call was to find out whether you would communicate with Mr. Smith and seek his authority to accept service of the Amended Complaint on behalf of the defendant. Upon reflection, I think that rather than have you accept service it would be better to proceed under Federal Rule of Civil Procedure 4 (d) and have Mr. Smith execute the Waiver of Service of Summons on behalf of the defendant corporation and return it to me for filing with the Clerk of the District Court.

Richard R. Fink, Esquire  
September 26, 2002  
Page 2

Toward that end, I am enclosing a copy of the Summons and Amended Complaint in this action, together with a (1) Notice of Lawsuit and Request for Waiver of Service of Summons and (2) Waiver of Service of Summons. I would appreciate your asking Mr. Smith to sign the Waiver of Service of Summons, accepting service on behalf of the defendant corporation, and return it to me at the above address. I would also ask Mr. Smith to provide me with a mailing address to which I may direct future correspondence to him and the defendant corporation.

I understand that you do not represent Mr. Smith or Gould International, Inc. d/b/a Giant Battery Co. in this matter and that by agreeing to assist in arranging for service you are not undertaking to enter your appearance on behalf of Mr. Smith or the defendant.

Very truly yours,



Lee A. Rosengard

LAR/th

Enclosures

cc: Thomas P. Callahan, Esquire (w/o encl.)

**EXHIBIT G**

---

**FINK, FINK AND ASSOCIATES**

RICHARD R. FINK

CHARLES M. FINK  
1909-1986

ATTORNEYS AT LAW  
THE LOFTS AT OXFORD VALLEY  
SUITE C-300  
174 MIDDLETOWN BLVD.  
LANGHORNE, PA 19047

44 EAST COURT ST  
DOYLESTOWN, PA. 18901  
215-794-2000

(215) 741-1212  
FAX (215) 741-0123  
finkoffices@aol.com

October 2, 2002

Lee A. Rosengard, Esquire  
Stradley, Ronon, Stevens & Young  
2600 One Commerce Square  
Philadelphia, PA 19103-7098

**RE: Modern Handling Equipment of N.J., Inc. v. Gould International, Inc.  
d/b/a Giant Battery Co., USDC E.D. Pa. Civil Action No. -2-CV-3204**

Dear Lee:

My client has not authorized me to accept service on his behalf. However, I have forwarded the correspondence which you sent me on September 26, 2002, to him and asked him to have an attorney enter an appearance on his behalf.

Very truly yours,



RICHARD R. FINK, ESQUIRE

RRF:dmt

**RECEIVED**

OCT 04 2002

S.R.S. & Y.  
L. A. ROSENGARD



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MODERN HANDLING EQUIPMENT  
OF N.J., INC.

Plaintiff,

v.

GOULD INTERNATIONAL, INC.,  
d/b/a GIANT BATTERY CO.

Defendant

Civil Action No. 02-CV-3204

**MEMORANDUM OF LAW OF PLAINTIFF,  
MODERN HANDLING EQUIPMENT OF N.J., INC.,  
IN SUPPORT OF ITS MOTION FOR EXTENSION OF TIME  
FOR MAKING SERVICE OF SUMMONS AND AMENDED COMPLAINT  
AND FOR SPECIAL ORDER OF COURT DIRECTING THE METHOD OF SERVICE**

This Motion by Plaintiff, Modern Handling of N.J., Inc., ("Modern") seeks both an extension of time for making service of the Summons and the Amended Complaint in this action and a special Order of Court directing the method of service. The reasons for this request are simple. First, the Defendant, Gould International, Inc., d/b/a Giant Battery Co., ("Giant") can no longer be found either at its registered address, which was the home of its sole officer, R. Stephen Smith, or at its prior place of business, which is now closed. Further, efforts to serve Mr. Smith under the Federal Rule of Civil Procedure permitting service to be made upon a corporation by delivering a copy of the Summons and Complaint to an officer, have been thwarted by Mr. Smith himself.

Federal Rule of Civil Procedure 4(h)(1) envisions two options for serving original process on a corporate defendant. One is to serve the summons and complaint in the manner

prescribed for individuals under Rule 4(e)(1), and the other is to deliver a copy to an officer, among other people. Rule 4(e)(1) allows service to be made, inter alia, pursuant to the law of the state in which the district court is located, in this case Pennsylvania. Pennsylvania law, as set forth in Pennsylvania Rule of Civil Procedure 424, allows service of original process by handing a copy, inter alia, to (1) an executive officer of the corporation or (2) the manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation.

Because Giant could not be found at its registered address or at its place of business, service could not be effected by leaving the Summons and Amended Complaint in this case with a manager, clerk or other person for the time being in charge of either facility. That meant that the only available method of serving the Summons and Amended Complaint, whether under Federal Rule of Civil Procedure 4(h)(1) or Pennsylvania Rule of Civil Procedure 424(1), available to Modern under Federal Rule of Civil Procedure 4(e)(1), was to serve Giant's only officer – R. Stephen Smith – personally.

Once Modern learned that Mr. Smith had moved to the Harrington, Delaware, area, it hired Donald F. McHugh, a retired Delaware State Trooper, as a process server, who found that Mr. Smith was living at 108 Lucky Estates, Harrington, Delaware, and who attempted repeatedly to make service of the Summons and Amended Complaint upon Mr. Smith at that location. As the Affidavit of Mr. McHugh makes clear, his various efforts to serve Mr. Smith at that address were thwarted, both by Mr. Smith's wife and by Mr. Smith himself. Both of these individuals refused to allow Mr. McHugh to make service of the Summons and Amended Complaint upon Mr. Smith on a number of occasions when it appeared, by the presence of Mr. Smith's automobile in front of his home or on the basis of eyewitness reports who had sighted Mr. Smith in the vicinity, that Mr. Smith was inside the residence. Indeed, in a telephone

conversation with Mr. McHugh in which Mr. McHugh advised Mr. Smith that Mr. McHugh was trying to make service of the Summons and Amended Complaint on Mr. Smith, Mr. Smith advised Mr. McHugh to send the papers to a lawyer who, it turned out, was not representing Mr. Smith at all, but rather someone trying to buy Giant from Mr. Smith.

Further, Mr. Smith has failed to return a Waiver of Service of Summons sent to Mr. Smith's criminal counsel at a time when Modern had not yet located the Harrington, Delaware, address of Mr. Smith. This is so despite the fact that such counsel advised Modern's lawyer in writing that he was forwarding the Summons and Amended Complaint to Mr. Smith and was advising him to retain counsel to enter an appearance.

What is clear here is that once it learned that Giant was no longer conducting business at its Pennsylvania address and that Mr. Smith (and therefore Giant) had moved from the Smiths' Chalfont, Pennsylvania, home, Modern made diligent efforts to locate Mr. Smith. Once it found him, Modern hired a process server to make personal service of the Summons and Amended Complaint upon him. It is Mr. Smith's own behavior that has interfered with that effort, and under the circumstances, alternate service is appropriate.

Pennsylvania Rule of Civil Procedure 403(a) provides that when service cannot be made under the applicable rule, in this case Pennsylvania Rule of Civil Procedure 424, the plaintiff may move the court, on affidavit, for a special Order directing the method of service. Modern has complied with this requirement by submitting the Affidavit of Mr. McHugh, the process server hired to make service on Mr. Smith in Delaware, and the Affidavit of Mr. Rosengard, Modern's counsel.

In light of the foregoing, Modern proposes that service of the Summons and Amended Complaint now be accomplished by mailing notice to three separate addresses. The

first is the address of Mr. Smith's father, Robert L. Smith, who posted bond for his son when R. Stephen Smith was arrested for access device fraud. Having put out \$25,000 to ensure that his son will appear in the criminal matter, it was seem obvious that Robert L. Smith knows the whereabouts of his son, R. Stephen Smith, and can make appropriate arrangements to provide him with the copy of the Summons and Amended Complaint that he receives by regular mail. The second is the address of Mr. Smith's criminal attorney, Richard R. Fink, Esquire. Again, when Modern provided Mr. Fink with a copy of the Summons and Amended Complaint, together with a Notice of Lawsuit and Request for Waiver of Service of Summons and a Waiver of Service of Summons, Mr. Fink wrote to Modern's lawyer, advising that he was forwarding those materials to R. Stephen Smith. It is clear that he can do so again, upon receiving a service copy pursuant to Order of this Court. The third is a post office box at which one of Mr. Smith's relatives reports that Mr. Smith receives mail.

For all the foregoing reasons, Plaintiff, Modern Handling Equipment of N.J., Inc., respectfully prays this Court to enter an Order directing it to make service of the Summons and Amended Complaint in this action on Defendant, Gould International, Inc., d/b/a Giant Battery Co., by mailing copies thereof, together with a copy of such Order, by regular mail to R. Stephen Smith, (1) in care of his father, (2) in care of his criminal counsel and (3) at his post office box. Modern further respectfully requests that, pursuant to Federal Rule of Civil

Procedure 4(m), it be given an additional 30 days from and after the date of such Order to file a Proof of Service of the Summons and Amended Complaint in compliance therewith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Rosengard', written over a horizontal line.

Lee A. Rosengard (Attorney I.D. #23458)  
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Attorneys for Plaintiff,  
Modern Handling Equipment of N.J., Inc.

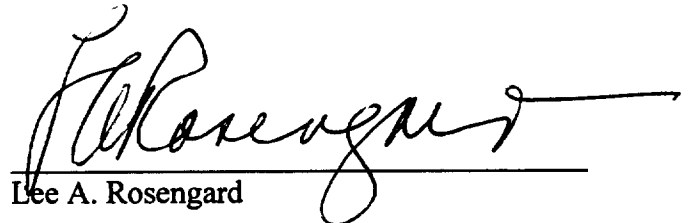
**CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2002, I caused a copy of the foregoing Motion of Plaintiff, Modern Handling Equipment of N.J., Inc., for Extension of Time for Making Service of Summons and Amended Complaint and for Special Order of Court Directing Method of Service, and accompanying Memorandum of Law, to be served on Defendant, Gould International, Inc., d/b/a Giant Battery Co., by mailing a copy thereof by United States Mail, First Class, postage prepaid, to the following:

Mr. R. Stephen Smith  
CEO, Secretary and Treasurer  
Gould International, Inc., d/b/a Giant Battery Co.  
c/o Mr. Robert L. Smith  
3540 Concord Road  
Doylestown, PA 18901

Mr. R. Stephen Smith  
CEO, Secretary and Treasurer  
Gould International, Inc., d/b/a Giant Battery Co.  
c/o Richard R. Fink, Esquire  
Fink, Fink and Associates  
The Lofts at Oxford Valley  
Suite C-300  
174 Middletown Road  
Langhorne, PA 19047

Mr. R. Stephen Smith  
CEO, Secretary and Treasurer  
Gould International, Inc., d/b/a Giant Battery Co.  
P.O. Box 157  
Harrington, DE 19952

  
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Lee A. Rosengard